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**Rules-- In a Knife Fight? A Study of Rules of Engagement**

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**A paper submitted to the Faculty of the Naval War College in partial satisfaction of the requirements of the Department of Joint Military Operations.**

**The contents of this paper reflect my own personal views and are not necessarily endorsed by the Naval War College or the Department of the Navy.**

**Signature:**\_\_\_\_\_

**03 February 2003**

## ***Abstract***

Never before in the history of the United States have the rules of engagement been as criticized and yet as important as they are today. Often labeled as too legalistic and complicated for the warrior, rules of engagement are subject to ever changing political environments. In some cases, changes in the political situation may literally alter the military mission from forced entry to permissive landing overnight. This would necessitate a re-write of the rules and would probably not allow the commander sufficient time to adequately reformulate the rules and disseminate them without putting personnel or the mission in risk. Further, a lack of understanding of one of the most important components of modern operations has lead some staffs to delegate the rules of engagement to the staff judge advocate without the coordination of the other staff branches, namely operations and intelligence. The results have been confusing, inadequate or ambiguous rules which have hamstrung operators and had adverse effects on mission completion. The War on Terror takes the U.S. into a new dimension in warfighting. No longer confined to relatively small operations in underdeveloped nations where the ROE can be tailored for a single purpose, the U.S. must consider global consequences of using force while still remaining sensitive to sovereign states without losing military flexibility and lethality.

Rules of engagement, in various forms, have existed as long as there have been formal militaries and have influenced the application of military power through war and operations other than war. In modern military operations the rules of engagement, which govern how U.S. armed forces operate and respond to the various environments in which they are employed, are more complex than ever. Further, the comprehensiveness and the utility of the rules could well determine mission success or failure. The United States has participated in an ever-growing number of military operations, predominantly joint operations other than war, around the globe. These operations have ranged from disaster relief to peace operations to war. All have been greatly influenced by the rules of engagement imposed on them. The rules of engagement have proven to be one of the most sensitive and problematic aspects of these types of operations, in some cases delegated to the staff judge advocate without proper guidance or consultation with the remainder of the staff. One frustrated staff judge advocate was unable to get either his commander or the staff to review the ROE he had been tasked to write. In desperation, he inserted ridiculous statements into the draft such as “if an individual stays in a telephone for more than three minutes, nuclear weapons are authorized.”<sup>1</sup> Some complain that rules of engagement (ROE) have become too restrictive and legalistic and have therefore hamstrung force commanders in the field. Some of the most dramatic illustrations in recent history include the UN operations in Somalia and Haiti, in which the United States was the lead nation of the UN sponsored operations. Using these two operations, this paper will critically examine the purpose, utility, and potentially confusing, inadequate or ambiguous rules that have hamstrung operators and had adverse effects on mission completion, and how current ROE might affect U.S. forces in the global War on Terror.

## ***Background***

The Joint Chiefs of Staff first formally adopted the term “rules of engagement” in 1958 as a set of rules being developed to guide U.S. fighter pilots in Cold War confrontations with Soviet aircraft. Specific rules of engagement were later drafted for the Bay of Pigs invasions and the Vietnam conflict.<sup>2</sup> In 1988, the Joint Chiefs of Staff published the first joint forces standing ROE document, “Peacetime Rules of Engagement” (PROE) which later evolved into “Chairman of the Joint Chiefs of Staff Instruction 3121.01, Standing Rules of Engagement for U.S. Forces (SROE).”<sup>3</sup> The latest version of the SROE in use today is CJCSI 3121.01A, which was last updated 15 January 2000.

Joint Pub 1-02 defines rules of engagement as “directives issued by competent military authority that delineate the circumstances and limitations under which United States forces will initiate and/or continue combat engagement with other forces encountered.”<sup>4</sup> Current SROE establishes fundamental policies and procedures governing the actions to be taken by U.S. force commanders during all military operations, contingencies, terrorist attacks or prolonged conflict outside the territorial jurisdiction of the United States.<sup>5</sup> In the case of specific military operations, including operations other than war, the President or Secretary of Defense may impose supplemental ROE to augment SROE. In addition, theater-specific supplementary ROE may be added at the discretion of the theater combatant commander.

To more effectively understand the scope of the current ROE and the ramifications that they have on operations, a brief look at the foundation for ROE is required. There are currently three fundamental pillars forming the foundation for rules of engagement in the U.S.: national policy, operational requirements, and the law.<sup>6</sup> National policy will

necessarily be the most dominant of the three pillars and the ROE developed must consider national objectives as well as foreign policy. The goal of U.S. national security policy is to preserve the survival, safety, and vitality of our nation and to maintain a stable international environment consistent with U.S. national security interests.<sup>7</sup> Further, the U.S has formulated a global objective of deterrence, or, if necessary, of defeating armed attack or terrorist actions against the United States and designated non-U.S. forces and foreign nationals and their property.<sup>8</sup> If deterrence fails, the U.S. response will be:

- 1) Proportional
- 2) Limited in scope and intensity
- 3) Non-escalatory
- 4) Focused on achieving military and political objectives.<sup>9</sup>

All of the above responses must respect the purpose of the mission and the force commander and his staff should be intimately familiar with them when crafting rules.

Operational requirements, the second pillar of ROE, are the responsibility of the force commander. The commander must ensure that national objectives are properly translated into military objectives and are subsequently attainable with the resources available. A detailed understanding of the current and future operating environment is required including the culture and customs of the local population, not just the geography and a catalog of enemy forces. If there is a mismatch between the ROE and the objectives, it is the commander's responsibility to modify the ROE or inform the chain of command of the disparity.

The final pillar for the development of ROE, the law, includes the law of armed conflict, international law in general, and American domestic tenets of law. The law of armed conflict is defined as: "that part of international law that regulates the conduct of armed hostilities including applicable treaty law as well as customary international law."<sup>10</sup> As such, the

crafters of ROE must ensure that the ROE for the operation is legally in accordance with both U.S. and international law. In so doing, operations are given legitimacy and acceptability in the eyes of the international community.

### ***Purpose and Functions***

With the bases for the formulation of ROE established, it is necessary to look at the purpose of ROE. As stated in CJCSI 3121.01A, the purpose of the standing ROE is:

“...to provide implementation guidance on the application of force for mission accomplishment and the exercise of the inherent right and obligation of self-defense.”<sup>11</sup>

This statement reveals the two main functions of ROE. The first function of ROE will guide commanders and focus the application of force toward mission accomplishment and achieving national objectives. The second function serves to ensure the safety and preservation of U.S. personnel and material, whether they are involved in hostilities or not.

In the first function, mission rules may vary greatly when comparing operations during war and operations conducted in military operations other than war. During war, ROE are generally less restrictive than during operations other than war, including peace operations. This is an important distinction for the commander when crafting ROE as well as for all the personnel assigned under the commander. The commander must consider that the forces that have traditionally been trained for engagement in armed combat could be the same personnel interacting on a daily basis with foreign civilians in peace operations. In the case of peace operations, there will likely be specialized training required. In order to ensure mission success, the rules of engagement must be comprehensive, clear, concise and distributed to all personnel in a timely manner.

Rules of engagement concerning self-defense comprise the second part of the U.S. SROE. The right of self-defense is recognized in Article 51 of the United Nations Charter:

“Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.”

Indeed, U.S. SROE further amplifies and defines the inherent right of self-defense:

“A commander has the authority and obligation to use all necessary means available and to take all appropriate actions to defend that commander’s unit and other U.S. forces in the vicinity from a hostile act or demonstration of hostile intent. Neither these rules, nor the supplemental measures activated to augment these rules, limit this inherent right and obligation. At all times, the requirements of necessity and proportionality, as amplified in these SROE, will form the basis for the judgment of the on-scene commander (OSC) or individual as to what constitutes an appropriate response to a particular hostile act or demonstration of hostile intent.”<sup>12</sup>

Further, the U.S. SROE have divided self-defense into four categories: national, collective, unit, and individual. National self-defense consists of defending the U.S. and its forces and, under some circumstances, U.S. nationals, their property, and/or U.S. commercial assets abroad. The defense of these may be exercised in two ways: extending protection following a hostile act or hostile intent as designated by proper authority, or with a designated authority declaring a foreign force or terrorist(s) hostile (which then negates the need to observe a hostile act or hostile intent).<sup>13</sup>

Collective self-defense consists of defending non-U.S. forces and/or designated foreign nationals and their property from an observed hostile act or demonstrated hostile intent.<sup>14</sup> Only the NCA may extend U.S. protection to non-U.S. forces.

Unit self-defense is the act of defending a particular U.S. force element including individual personnel and other U.S. forces in the vicinity against a hostile act or demonstrated hostile intent. Finally, individual self-defense is the inherent right to use all necessary means available and to take all appropriate actions to defend oneself and U.S. forces in one's vicinity from a hostile act or demonstrated hostile intent.<sup>15</sup>

### ***Somalia***

The first major ROE challenge for U.S. commanders following the implementation of peacetime ROE was during the U.S.-led United Nations humanitarian operations in Somalia from 1992-1994. Throughout this operation, there was a great deal of frustration and, in some cases, confusion as the rules of engagement were not properly matched to the mission or the environment. First of all, CENTCOM used the U.S. peacetime ROE as the basis for the operation's ROE. This was in part due to the unclear nature of the threat. Also, during the initial stages of the operation, there was not yet a designated hostile force.<sup>16</sup> Second, the ROE directed soldiers to use a graduated response system, varying from verbal warnings to shows of force, and defined armed Somalis who were neither attacking nor threatening soldiers as "threats."<sup>17</sup>

The rules issued from the commanders oftentimes served more as administrative burdens than of serving any real purpose. One rule of engagement required that any time there was an incident involving a shooting, the incident was to be reviewed, and if necessary, an official investigation would be conducted. For example, theft of U.S. weapons by the Somalis was an ever-occurring problem that was magnified by the ineffectiveness of Moroccan troops charged with guarding the compound where the weapons were stored. On

one occasion, a soldier from the 10<sup>th</sup> Mountain Division spotted a Somali inside the compound and fired several rounds into the air as an alarm. No one was hurt, but because ROE may have been violated, the soldier was placed under investigation.<sup>18</sup> This was one of many policies imposed by commanders that began to shift U.S. forces' mindset to fear the legal consequences of their individual actions more than the conduct of their mission or their self-defense.

Several occurrences of assault and theft against U.S. forces further frustrated the troops where self-defense was involved. Due to the uncertain nature of such threats, CENTCOM and the commander of JTF Somalia had only given limited thought to this problem and effective methods of defense short of deadly force were nearly non-existent.<sup>19</sup> In time, this aspect of the ROE that had been overlooked would endanger the very personnel that were assigned to Somalia in a humanitarian role. Compounding the problem, the Somalis quickly learned that the soldiers generally would not shoot children that threw rocks or swarmed vehicles. An example of this could be seen when a guard in a convoy near the Headquarters for U.S. forces in Somalia. A Somali hit the guard in the head and then ripped her sunglasses off her face while she held an M-16. Since she could not use deadly force against the assault, she began carrying a club for self-defense.<sup>20</sup> A similar occurrence happened with Gunnery Sergeant Harry Conde, a Marine who was in a convoy when it slowed at an intersection in Mogadishu. A Somali reached in to steal his sunglasses and Conde, who thought he was being attacked, fired his weapon as the convoy pulled away resulting in two Somalis being wounded. As a result of this incident, Conde was convicted of aggravated assault for using excessive force. Further, it was ruled that the shooting was not within the ROE.<sup>21</sup> Since the ROE was so restrictive, Conde only had two options when

he felt threatened -- either risk death from assault or defend himself and use excessive force. In yet another incident involving a Mogadishu shooting, a Marine killed a Somali youth who ran behind a Marine vehicle with what appeared to be an ammunition can. The Marine claimed that he thought it was a bomb, or at least looked like a bomb, and the shooting was ruled as self-defense.<sup>22</sup> Why this case was ruled to be within the ROE under the operating environment at that time is not clear. If the Marine was not under attack, certainly the already confusing ROE inspired only more questions when considering Gunnery Sergeant Conde's case.

Certainly, the Marines felt threatened or perceived their situations to be a threat in all three cases. However, the ROE and their limits of force clearly could be considered too restrictive when considering self-defense, and in the case of GySgt Conde, failed to consider the stressful and tenuous positions Marines and troops were put in daily or any extenuating circumstances. More guidance was needed from the commanders to correct confusing and restrictive ROE that was victimizing their forces with either physical injuries or legal convictions.

As a result of excessive legalities, warriors now feared an Article 32 hearing more than injury or death if ever they were in the unfortunate position of having to defend themselves. Obviously there was a gap between the use of lethal and non-lethal force. One of the tools used to bridge the gap between verbal warnings and deadly force was the eventual use of cayenne pepper spray as a non-lethal weapon. Although it was used effectively and became a viable deterrent to low-level threats, the mindset for those in the field shifted as a result of poor ROE. Cayenne pepper spray had become a substitute for deadly force instead of complement to it. Soldiers and Marines gradually became too timid

to properly defend themselves. For example, a group of Marines coming to the aid of another Marine under attack by a knife-wielding Somali chose the spray to subdue the attacker vice their M-16s or sidearms when deadly force was clearly appropriate and justifiable.<sup>23</sup> Clearly, this incident could have resulted in a dead Marine because of ROE that had conditioned troops into thinking they could not properly defend themselves. The commander should have assessed situations such as these and clarified or updated the ROE accordingly. The ROE were inadequate and ambiguous for the mission.

Additionally, there was widespread frustration from the soldiers and Marines in the field that the ROE prohibited successful mission completion. One aspect of the mission was the reduction of Somalian arms where the U.S. forces (UN) were operating. Commanders were authorized to use all necessary force to disarm groups and individuals and demilitarize those areas under their control.<sup>24</sup> However, the UN's ability to disarm the Somalis was extremely doubtful. Even General Hoar, commander of CENTCOM, concurred that disarming the bandits and warlords whose actions initiated the UN action in the first place was next to impossible.<sup>25</sup> Collection of banned weapons such as crew-served weapons and "technicals" was hindered by the overly-restrictive ROE making enforcement unrealistic. For example, the ROE prohibited searching private homes for weapons and stolen food which in turn made every home a possible safe haven for weapons caches that, even if U.S. forces knew their location, could not be gathered. Not only did this frustrate U.S. forces, but also the Somalis providing intelligence for the operation began questioning the prestige and purpose of the UN forces.<sup>26</sup> The operation in Somalia was hamstrung by ROE. Clearly, the rules of engagement did not match the mission, which lead a former brigadier general and lieutenant colonel to write:

“The Rules of Engagement were imposed by diplomats working with desk-bound brass who didn’t face the dangers of the Somalian operation on the streets and in the outback. In Mogadishu where sniper fire was a daily occurrence, stealing was rampant.”<sup>27</sup>

These restrictive ROE served only to empower the warlords who continued to ambush convoys and snipe at U.S. soldiers on patrol. The warlords, who knew the ROE imposed on the UN operation, would use women and young children to plant bombs and booby traps where men would come under suspicion.<sup>28</sup> As the operation continued and the level of violence increased, the ROE changed making the use of deadly force even more restrictive. For example, following a shootout near the UN headquarters in southern Mogadishu, UN troops were no longer permitted to fire on “technical” on sight but instead were now required to use “minimum force.”<sup>29</sup> Further restricting the ROE had several ramifications, the greatest of which was a reluctance of troops to exercise any authority at all in Somalia rendering them all but impotent. The operation had disintegrated and abandoned its original purpose. Ideally, the commander would have amended the ROE to be more responsive to those forces in the field, not the Somali warlords.

### ***Haiti***

Operation *Uphold Democracy* addressed some new problems with regard to ROE as well as revisiting some of the same challenges faced earlier in Somalia. One of the key tenants of the ROE for the initial operation was the premise that the landing into Haiti would be a forced entry. Although it was unclear how much armed opposition Joint Task Force 180 would encounter, the armed forces of Haiti were declared hostile.<sup>30</sup> This of course meant that the armed forces would not have to be observed committing a hostile act or exhibiting hostile intent, but could be engaged on sight. However, as the planning for the forced entry

progressed during the summer of 1994, distinguishing between the Haitian armed forces and the civilian population became increasingly difficult. This was because the forces which made up the Haitian armed forces, including the Forces Armees D’Haiti (FADH) and the national police had discarded their uniforms for civilian clothes or mufti while on duty allowing them to easily blend in with the civilians. In addition, there were reports of a civilian militia with no recognizable uniform or insignia being formed that were expected to be issued weapons prior to any perceived hostilities.<sup>31</sup> To further complicate the ROE planner’s task, civilians were also armed as a matter of course with machetes and pistols and shotguns, some with automatic weapons and even grenades. “On sight” became an extremely muddled problem and a hostile determination became a very difficult proposition.

The conundrum now faced by the planners was how to differentiate between hostile forces that would be dressed as civilians, and the rest of the civilian population, all of whom openly carried weapons in public. The solution lay in determining whether to declare someone hostile based on their status or their conduct or somewhere in between. While the staff of U.S. Atlantic Command (USACOM) pressed declaration of the armed forces as hostile, the Chairman of the Joint Chiefs of Staff (CJCS) staff preferred the hostile declaration based on conduct.<sup>32</sup> The resultant rule was a combination of the two:

“You may presume that civilians in public armed with crew served weapons, automatic weapons, or rifles are members of the FADH, National Police, or paramilitary groups, and therefore may treat them as hostile. Civilians in public armed with shotguns or pistols are presumed to be potentially hostile, but deadly force is not authorized unless such persons use or threaten to use armed force against U.S. troops, U.S. citizens, or designated foreign nationals.”<sup>33</sup>

Simultaneous to the development of the forced entry ROE by JTF 180, ROE were being developed in parallel for a permissive entry into Haiti by JTF 190. In this scenario, no

forces were declared hostile but the ROE still permitted the use of force in response to hostile acts or hostile intent. On 18 September, just hours before the invasion was to begin, the Carter-Jonassaint agreement was signed. This agreement resulted in radically altering the mission - the forced entry transformed into a permissive landing and in effect had the FADH and the task force working cooperatively. Enemy forces the day before had now become confederates with the task force. The new political situation called for yet another change of ROE and less than one day to do it. The forced entry and permissive ROE plans were quickly melded together to form new ROE and the permissive landing occurred the next day.<sup>34</sup> Unfortunately, as history later revealed, melding the two plans at that late juncture yielded ROE that was fragmented and incomplete and would result in a public uproar against policy makers and military planners.

Prior to the landing, JTF staff members and others recognized a lack of express guidance in the ROE regarding the possible violence between the Haitians themselves. The concern was that based on the mission, which was to establish a secure and stable environment, if the JTF were relegated to conducting police duties their presence could only worsen the situation in Haiti.<sup>35</sup> Therefore, USACOM requested a modification of the ROE that permitted the task force to use deadly force against persons committing criminal acts. The request was approved by the CJCS and USACOM forwarded the updated rule to both CJTF 180 and CJTF 190. Unfortunately, while the soldiers of the 10<sup>th</sup> Mountain Division that landed in Haiti still carried a series of color-coded cards spelling out the ROE for permissive and non-permissive landings, the permissive entry ROE cards lacked the update to the ROE which allowed action against criminal acts by Haitians.<sup>36</sup> With the series of cards issued and the uncertainty of what their mission was, one soldier remarked, “ If we postpone

the operation another day, we might end up with enough for a complete deck of playing cards.”<sup>37</sup> The updated cards would not be issued for three more days, two days after the landing.

On 20 September, the day following the landing, the absence of updated ROE cards in the hands of the soldiers resulted in one of the most crippling media events of the operation. A group of pro-Aristide demonstrators located near the U.S. marshalling area was being dispersed by the Haitian police using brute and excessive force. Members of the media that were covering the event happened to videotape the Haitian police viciously beating demonstrators and clubbing a street vendor to death while U.S. troops passively stood by, restricted (so they thought) from stopping the senseless brutality.<sup>38</sup> This event had a catastrophic effect on public opinion of the operation, sharply criticizing policy makers and military planners and debating the utility of the troops deployed there. When the “new” ROE cards finally arrived to the troops on 21 September, the media erroneously attributed the change in ROE to their criticisms. In fact, the ROE had been approved three days before but had failed to be disseminated to those in the field. This case reveals the possible repercussions to an operation if ROE are not properly integrated at all levels. Had the commander been given adequate time to reformulate the rules and disseminate them prior to the landing, the soldiers would not have been in possession of the obsolete ROE cards. This could have prevented the loss of life and injury, and the entire operation would not have been put in jeopardy.

### ***Ramifications on the War on Terror***

The War on Terror has added several dimensions to any operation that the U.S. has undertaken in the last twenty years, perhaps in its history. The U.S. faces a non-state organization(s) that bases and trains all over the globe with or without the permission of sovereign states as opposed to the relatively small-scale one-state peace operations previously discussed. The War on Terror can be considered a combination of war and military operations other than war based on the national objective, which is the elimination of terrorist networks throughout the world, specifically Al Qaeda, and our operating environment, which by and large is being conducted in areas other than designated combat zones. The sheer magnitude of crafting supplemental ROE that is applicable worldwide is a monumental task, requiring tailored ROE for each region, if not each country. Not only will the ROE have to be sensitive to sovereign governments and treaties, their territories, customs, culture and prevent civilian casualties all over the world, it must simultaneously provide theater combatant commanders enough flexibility to engage hostile forces with adequate lethality when encountered. The enemy has chosen not to acknowledge the Law of Armed Conflict and has also intentionally targeted civilians. Additionally, the enemy has no uniform and has the ability to operate worldwide and blend with local populations complicating recognition and designation issues that have proven to be so troublesome for ROE in the past.

Forces engaged in combat in Afghanistan against Taliban and Al Qaeda have already experienced difficulties striking targets that first had to be approved via their chain of command. In many cases targets could have been engaged within a matter of minutes but were required to go through a command and control “kill loop” whereby decisions for force

application approval can take hours or even days, but regardless prevent U.S. forces from attacking.<sup>39</sup> The “kill loop” has the potential of restricting the use of force to the degree where enemy personnel are in essence allowed safe passage to terrorize another day while we bind our troops’ hands. Certainly opportunities to engage targets as ephemeral as Al Qaeda cannot be forfeited and the rules must be more responsive for time critical targets. If the ROE prevent engagements of these hostile forces, the U.S. will be faced with the situation of prolonging even further a conflict that is already expected to span over several years. Based on history, the U.S. people favor shorter conflicts, and if the ROE remain so restrictive so as to allow hostile forces slip away unscathed, then the nation will either lose its will or its interest to continue the War on Terrorism.

### ***Conclusion***

Both the Somalian experience and the Haitian operation served to illustrate how detrimental confusing, inadequate or ambiguous ROE can be on mission effectiveness or how subjective they may be in self-defense. Clearly, rules of engagement are a necessary part of military operations – especially military operations other than war (MOOTW) and the War on Terror where enemy forces have hidden themselves among innocent civilians. If the U.S. misapplies force and endangers non-combatants, especially on foreign soil, the resultant and cumulative loss of prestige and cooperation with other nations would follow and would jeopardize U.S. national objectives. Properly crafted and executed, the ROE will reflect national objectives and policy to the combatant commander and will in turn be translated into simple use of force guidelines for the operators in the field that will be effective in accomplishing mission objectives. In order to do this, draft ROE requirements cannot be

thrust upon the staff judge advocates. The commander must take ownership of the rules and ensure that all the staff branches, especially the J-3 and J-2, fully understand the rules and are aware of any and all restraints and constraints. There cannot be a repeat incident of a staff judge advocate writing absurd passages to highlight his desperation. Simply using word processing programs to change country “X” to country “Y” is inappropriate as well and fails to capture the essence or importance of the set of rules that will guide soldiers in the field and airmen in the air. Each operation will be unique – in geography, population, culture, mission, and forces available, to name a few. Each new draft of the ROE should reflect the essence of the operational environment and should be reviewed often for even subtle changes. Rules of engagement cannot bind the commander’s hands or prevent forces from defending themselves or completing their mission successfully, nor should they allow needless gunning down of civilians or destruction of property which would clearly be contrary to national objectives.

Further, commanders cannot accept rules that would put their forces at unnecessary risk. An excellent example of this was demonstrated when the commander from the 75<sup>th</sup> Ranger Regiment was ordered to deploy his troops with no live ammunition across a known guerrilla infiltration route while on an exercise in Honduras in 1986.<sup>40</sup> He refused to deploy his troops until, on his insistence, the ROE went through three iterations. When the ROE finally ensured there was no unacceptable risk for his men and his mission, he deployed and completed the mission.

Finally, the U.S. military must learn from the past – now more than ever. Each peace operation the U.S. has been involved in since Somalia has provided a wealth of data and experience in the proper crafting and re-crafting of ROE. Commanders and crafters must put

this knowledge to work in order to gain victory in the ever-complicated War on Terror.

Commanders must ensure that the ROE assure victory and guarantee adequate self-defense.

Anything less will be a travesty.

## Notes

- <sup>1</sup> W. Hays Parks, "Deadly Force Is Authorized," *U.S. Naval Institute Proceedings* (January 2001): 37.
- <sup>2</sup> Center for Law and Military Operations and Headquarters Marine Corps, Judge Advocate Division, International and Operational Branch (HQMC JA (JAO)), "Rules of Engagement: What are They and Where Do They Come From?" *Marine Corps Gazette* (April 2002): 60.
- <sup>3</sup> Ibid.
- <sup>4</sup> Joint Chiefs of Staff, *Department of Defense Dictionary of Military and Associated Terms*, Joint Pub 1-02. Washington, DC: 12 April 2001 (As amended through 14 August 2002), 384.
- <sup>5</sup> Chairman, Joint Chiefs of Staff, *Standing Rules of Engagement for U.S. Forces*, CJCSI 3121.01A (Washington, DC: 2000), A-1.
- <sup>6</sup> James C. Duncan, "The Commander's Role in Developing Rules of Engagement," *Naval War College Review* (Summer 1999): 77.
- <sup>7</sup> CJCSI 3121.01A, A-3.
- <sup>8</sup> Duncan, 78.
- <sup>9</sup> Ibid.
- <sup>10</sup> JP 1-02, 253.
- <sup>11</sup> CJCSI 3121.01A, A-1.
- <sup>12</sup> Ibid. A-3.
- <sup>13</sup> Ibid. A-4.
- <sup>14</sup> Ibid.
- <sup>15</sup> Ibid.
- <sup>16</sup> Jonathan T. Dworken, "Rules of Engagement: Lessons from *Restore Hope*," *Military Review*, 74 (September 1994): 28.
- <sup>17</sup> Ibid.
- <sup>18</sup> Ed Wheeler and Craig Roberts, *Doorway to Hell: Disaster in Somalia* (Tulsa: Consolidated Press International, 2002), 69.
- <sup>19</sup> Dworken, 30.
- <sup>20</sup> Wheeler and Roberts, 70.
- <sup>21</sup> Dworken, 26.
- <sup>22</sup> Paul D. Adams, "Rules of Engagement: The Peacekeeper's Friend or Foe?" *Marine Corps Gazette* (October 1993): 21.
- <sup>23</sup> Dworken, 31.
- <sup>24</sup> Ibid, 28.
- <sup>25</sup> Wheeler and Roberts, 70.
- <sup>26</sup> Ibid, 71.
- <sup>27</sup> Ibid, 69.
- <sup>28</sup> Ibid, 133.
- <sup>29</sup> Ibid, 155.
- <sup>30</sup> M.N. Schmitt, *International Law Studies: The Law of Military Operations*, (Newport: Naval War College Press 1998), 227.
- <sup>31</sup> Ibid.
- <sup>32</sup> Ibid, 228.
- <sup>33</sup> Ibid, 229.
- <sup>34</sup> U.S Army Center for Law and Military Operations, Law and Military Operations in Haiti 1994-1995: Lessons Learned for Judge Advocates (Charlottesville, VA: 1995), 37.
- <sup>35</sup> Ibid.
- <sup>36</sup> Ibid, 38.
- <sup>37</sup> Lawrence E. Casper, *Falcon Brigade: Combat and Command in Somalia and Haiti* (Boulder: Lynne Rienner Publishers, Inc., 2001), 201.
- <sup>38</sup> Schmitt, 230.
- <sup>39</sup> Sandra I. Erwin, "Air Warfare Tactics Refined in Afghanistan," *National Defense*, (April 2002): 12.
- <sup>40</sup> Parks, 37.

## Bibliography

Adams, Paul D. "Rules of Engagement: The Peacekeeper's Friend or Foe?" *Marine Corps Gazette* 77 (October 1993): 21-23.

Allard, Kenneth. *Somalia Operations: Lessons Learned* (Ft. McNair, Washington, DC: National Defense University Press, 1995).

Casper, Lawrence E. *Falcon Brigade: Combat and Command in Somalia and Haiti* (Boulder: Lynne Rienner Publishers, Inc., 2001).

Center for Army Lessons Learned (CALL) and U.S. Army Combined Arms Command (CAC). *Somalia: Operations Other Than War 93-1* (Fort Leavenworth, Kansas: Center for Army Lessons Learned, January 1993).

Center for Law and Military Operations and Headquarters Marine Corps, Judge Advocate Division, International and Operational Branch (HQMC JA (JAO)). "Rules of Engagement: What are They and Where Do They Come From?" *Marine Corps Gazette*. 86 (April 2002), 59-61.

Chairman, Joint Chiefs of Staff. *Standing Rules of Engagement for U.S. Forces*. CJCSI 3121.01A. (Washington, DC: 2000).

Duncan, James C. "The Commander's Role in Developing Rules of Engagement." *Naval War College Review* (Summer 1999): 76-87.

Dworken , Jonathan T. "Rules of Engagement: Lessons from *Restore Hope*." *Military Review* 74 (September 1994): 26-34.

Erwin, Sandra I, "Air Warfare Tactics Refined in Afghanistan." *National Defense* (April 2002): 12-13.

Joint Chiefs of Staff. *Department of Defense Dictionary of Military and Associated Terms*, Joint Pub 1-02. (Washington, DC: 12 April 2001 (As amended through 14 August 2002)).

Lorenz, Frederick M. "Standing Rules of Engagement: Rules to Live By." *Marine Corps Gazette* 80 (February 1996): 20-21.

\_\_\_\_\_. "Rules of Engagement Training." *Marine Corps Gazette* 80 (September 1996): 77-79.

Murphy, John R., Jr. "Rules of Engagement for Military Operations Other Than War." *Marine Corps Gazette* 80 (September 1996): 80-81.

Parks, W. Hays, "Deadly Force Is Authorized." *U.S. Naval Institute Proceedings* 127 (January 2001): 32-37.

Rose, Stephen A. "Crafting the Rules of Engagement for Haiti," in *International Law Studies: The Law of Military Operations* ed. M.N. Schmitt (Newport: Naval War College Press, 1998), 225-237.

Siegel, Adam B. "The Minimize-Maximize Continuum." *Marine Corps Gazette* 84 (September 2000): 30-34.

Spence, Mike. "Lessons for Combined Rules of Engagement." *U.S. Naval Institute Proceedings* 126 (October 2000): 56-60.

Stevenson, Jonathan. *Losing Mogadishu: Testing U.S. Policy in Somalia* (Annapolis, MD: Naval Institute Press, 1995).

U.S Army Center for Law and Military Operations, *Law and Military Operations in Haiti 1994-1995: Lessons Learned for Judge Advocates* (Charlottesville, VA: 1995).

Womack, Stephen M. "Rules of Engagement in Multinational Operations." *Marine Corps Gazette* 80 (February 1996): 22-23.

Wheeler, Ed and Roberts, Craig. *Doorway to Hell: Disaster in Somalia* (Tulsa: Consolidated Press International, 2002).